



Rev.Appl. No.193 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

Rev.Appl. No.193 of 2015

against

S.A.No. 349 of 2008

Periyasamy

... Petitioner

-Vs-

1. Kasi Ammal
2. Muruvayi
3. Adhimoolam
4. Muthusamy
5. Vijayakumari
6. Shanthi
7. Samidurai
8. Sivakumar
9. Malathi

(R7 to R9 are brought on record
as LR's of deceased 2nd respondent
viz., Muruvayi vide order of court
dated 31.10.2022 made in C.M.P.
Nos. 11123, 11125 & 11127 of 2010)
Respondents

...

Prayer : Review Petition is filed under Order 47 Rule 1 r/w Sec.114 of C.P.C., praying to review the judgment and decree dated 08.06.2015 in S.A.No. 349 of 2008 on the file of Hon'ble High Court of Judicature,



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Madras and allow the review petition.

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For Petitioner

: Mrs.Chitra Sampath

Senior Advocate for

Mr.R.Sunil Kumar

For Respondent

: Mr.D.Shivakumaran

ORDER

This Review Petition has been filed to review the judgment and decree passed by this court dated 08.06.2015 in S.A.No.349 of 2008.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The Review Petitioner is the plaintiff in the suit. Originally, he filed a suit in O.S.No. 343 of 1997 for the relief of declaration and injunction against the respondents/defendants. That suit was decreed in favour of plaintiff. Against which, the defendant preferred an appeal before the Sub-Court, Vridhachalam in A.S.No. 153 of 2006, wherein the first appellate judge analysed the facts and evidence independently and finally concluded that the findings given by the trial judge is erroneous one. Accordingly, the judgment was reversed, thereby suit was dismissed.



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Aggrieved that, plaintiff preferred a Second Appeal in S.A.No. 349 of 2008. On hearing both sides, this Court held that the property description found in the title deed Ex.A1 relied on the plaintiff is not tallied with northern boundary of the suit property and also not agreed with the plaintiff's contention that the suit property is the property purchased by grandfather of plaintiff in the year of 1948 under Ex.A1. Further, the trial judge also relied the proposition that the plaintiff was bound to prove his case as he failed to establish the suit property belong to him and enjoyed all these years from the year of 1948 through revenue records and other material evidence. But on the side of plaintiff, no document was produced. Accordingly, it was held that possession from the year of 1948 till filing of suit in the year of 1997, plaintiff not proved his title and possession, thereby confirmed the findings of 1st appellate judge. Accordingly, the Second Appeal was dismissed and consequently, the suit was also dismissed in the year of 2015.

4. Now, the Review Petition was filed by the appellant/plaintiff stating in para 12 of judgment, which reads as follows :-

“12. Considering both the documents i.e. Ex.A1/Sale deed



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and the plaint, the Southern and Western boundary has not been disputed, Eastern boundary mentioned as Chinnapillai which was retained by the plaintiff's grandfather as per Ex.A1 and subsequently, he settled the same under Ex.A7 and one of the boundary was shown as appellant's property. The Northern boundary in Ex.A1 has been shown as Murugan's house, who is none other than the 1st defendant's father. But, whereas in the plaint, it was stated as South of East to West. Hence, the northern boundary has been wrongly mentioned. So, I am of the view that the boundary given in Ex.A1 tallies with the description of suit property in respect of three sides, but not tally with the Northern boundary. In Ex.A1, it was specifically mentioned that Northern boundary is Murugan's house, who is the father of the first defendant, but in the description of the suit property, it was mentioned as Mangalore Road. No explanation has been given as to when the Mangalore Road has been formed and how the Northern boundary has been different from Ex.A1. So, there is no evidence to show that the suit property



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is the property purchased by the plaintiff's grandfather

Munish in the year 1948 under Ex.A1.”

Further, he has also submitted that on the side of plaintiff, the learned judge had observed that the documents filed by the defendants not related to the suit property. In such circumstances, the findings of first appellate judge in paragraph 16 and 18 ought to have been set aside for the reason that the said appellate judge held that the defendants are in possession of property based on those documents. Further, he would submit that the suit property is classified as Grama natham and there is no possibility to produce the document for possession of property. When the trial judge concludes that no document was produced as such, it is an error on the face of record. Accordingly, he prayed to review the judgment.

5. By way of reply, learned counsel for respondents would submit that the judgment delivered in the Second Appeal is well-reasoned one and on considering the question of law as well as evidence on record, this court rightly dismissed the second appeal as the plaintiff not established his title and possession of property. Further, he would also argues that by way of filing review petition, the petitioner is not entitled to repeat the same



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argument unless there is material error on the face of record. For which he relied on the ratio laid down by the Supreme Court of India reported in **2022 (5) ALD (SC) 174 ; 2022 (5) ALT (SC) 54; 2022 (4) BBCJ (SC) 255; 2022 (3) CurCC(SC) 246; 2023 (1) ICC 95; 2022 (5) KLT (SN) 18; 2022 (6) MLJ 357; 2022 (12) Scale 261; 2022 (7) Supreme 428; 4022 0 Supreme (SC) 734** in the case of **S.Madhusudhan Reddy vs. V.Narayana Reddy and others**, wherein the Apex Court held as follows :-

“(A) Civil Procedure Code, 1908 – Order XLVII Rule 1 read with Sec. 114 – Review – Review of an earlier order cannot be done unless court is satisfied that material error which is manifest on face of order, would result in miscarriage of justice or undermine its soundness – Error must be apparent on face of record and not one which has to be searched out – In exercise of review jurisdiction, Court cannot reappreciate evidence to arrive at a different conclusion even if two views are possible in a matter – Under garb of filing a review petition, a part cannot be permitted to repeat old and overruled arguments for reopening conclusions arrived at in a judgment – Power of review is not to be confused with appellate power which enables Superior Court to correct errors committed by a Subordinate Court.

(B) Civil Procedure Code, 1908 – Sec.114 read with Order



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XLVII Rule 1 – Review – An order can be reviewed by Court only on the grounds prescribed in Order XLVII Rule 1 CPC – Said power cannot be exercised as an inherent power and nor can appellate power be exercised in guise of exercising power of review – In guise of exercising powers of review, Court can correct a mistake but not substitute view taken earlier merely because there is a possibility of taking two views in a matter – A judgment may also be open to review when any new or important matter of evidence has emerged after passing of judgment, subject to condition that such evidence was not within knowledge of part seeking review or could not be produced by it when order was made despite undertaking an exercise of due diligence – There is a clear distinction between an erroneous decision as against an error apparent on face of record – An erroneous decision can be corrected by Supreme Court, however, an error apparent on face of record can only be corrected by exercising review jurisdiction – In order to satisfy requirements prescribed in Order XLVII Rule 1 CPC, it is imperative for a party to establish that discovery of new material or evidence was neither within its knowledge when decree was passed, nor discovery of new material or evidence was neither within its knowledge when decree was passed, nor could party have laid its hands on such documents/evidence after having exercised due diligence, prior to passing of order – Recourse to successive review petitions against same order



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is impermissible.”

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Further, he would submit that if at all, the identification of suit property has not been properly appreciated by this court, the petitioner is entitled to challenge the same before the higher forum, instead of that through this review petition, he prayed to revisit the Second Appeal as such is not maintainable and prayed to dismiss the same as no merit.

6. Considering both side submissions and on perusal of judgment, it reveals that originally, review petitioner/plaintiff filed a suit for the relief of declaration and permanent injunction in respect of suit property with four boundaries against defendants, who are neighbours. The plaintiff claimed title based upon grandfather's purchase in the year of 1948 through sale deed, but the boundary found in the said sale deed not tallied with the description of suit property in the plaint. Therefore, the first appellate judge has not accepted the plaintiff's claim though the trial judge decreed the suit. The contention of defendants is that the property is classified as a grama natham land and it was divided and allotted to third parties, therefore, the plaintiff is not entitled to claim title of property belongs to defendants. But, before the trial court, there was no document adduced on



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the side of plaintiff for the possession of property, besides the boundaries of suit property as well as boundaries in the sale deed Ex.A1 is not tallied.

So, on considering all these aspects, this Court rightly dismissed the Second Appeal as the plaintiff has not proved is title by confirming the findings of first appellate judge. If at all, the plaintiff is aggrieved, he has to approach the higher forum and not by way of review petition as rightly pointed out by the respondents. Hence, there is no error on the face of record to review the order of this court. So, the reason assigned to review the findings by the petitioner is beyond the scope of review. Accordingly, this Review Petition is dismissed as no merit.

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Index : Yes/No

Speaking Order : Yes/No

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T.V.THAMILSELVI, J.

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